

Application No.: 10/057,212  
Filing Date: January 24, 2002  
Page No.: 4

### REMARKS

Claims 1, 4 through 8 and new Claims 12 and 13 are pending.

Claim 1 has been amended to recite that the methods of the invention are directed to agricultural livestock feedstuffs. Support for this amendment can be found in the application as filed, for example on Page 3, lines 11 through 14.

Claims 12 and 13 have been added to complete the record for examination and highlight advantageous embodiments of the invention.

Claim 12 reflects that the methods of the invention advantageously provide agricultural livestock growth rates of up to 128%. Support for this amendment can be found in the application as filed, for example on Page 7, lines 1 through 3.

Claim 13 reflects advantageous methods of the invention directed to more particular livestock feedstuffs. Support for Claim 12 can be found in the application as filed, for example on Page 3, line 28 through Page 4, line 1.

Reexamination and reconsideration of this application, withdrawal of all rejections, and formal notification of the allowability of the pending claims are earnestly solicited in light of the remarks which follow.

Application No.: 10/057,212  
Filing Date: January 24, 2002  
Page No.: 5

**Applicants Respectfully**

**Traverse This Rejection**

Applicant takes this opportunity to make of record his respectful dispute of this rejection. Claims 1 and 4 through 8 as amended on April 1, 2004 by Examiner's Amendment were allowed within the Notice of Allowability issued April 5, 2004. The issue fee was subsequently forwarded on June 8, 2004. A Notice of Withdrawal from Issue was forwarded on July 2, 2004. Subsequently, a non-final Office Action was issued on July 29, 2004, rejecting the previously allowed claims in light of newly cited United States Patent 4,904,494 to Spanier. ("US 494").

Applicant respectfully submits that (1) there was no mistake on the part of the Office; (2) there is no violation of the duty to disclose information or other illegality within the application; (3) the claims are patentable in light of the art of record, including the newly cited reference and (4) the above-referenced application is not involved in an interference. See 37 CFR 1.313(b). Accordingly, Applicant respectfully submits that the Notice of Withdrawal from Issue dated July 2, 2004 was issued in error.

Applicant more specifically respectfully submits that the Notice of Allowance issued April 5, 2004 did not contain any error in patentability. It is Applicant's Representatives understanding that above-referenced application was withdrawn in conjunction with the Patent and Trademark Office's Quality Initiatives, whose purported aim is to change the PTO into a customer-focused performance based organization. However, in contrast to its stated purpose, the above-referenced withdrawal has resulted in increased costs and delay on behalf of the Applicant.

In that regard, Applicant respectfully submits that the cited reference is merely cumulative in light of United States Patent No. 4,444,796 ("US 796"), cited by the Examiner in the Office Action of December 4, 2003. US 796 was cited by a Primary

Application No.: 10/057,212  
Filing Date: January 24, 2002  
Page No.: 6

Examiner with many years of experience within the art, i.e. an Examiner of equal patentability-determining authority to that of the Quality Review Board. Amendments made in light of US 796 and numerous other references cited by the Examiner resulted in the Notice of Allowance issued April 5, 2004.

Applicant's Representative respectfully submits that, rather than improve patent quality by instituting such second-tier reviews, the Patent Office is instead indulging in a hindsight analysis of highly dedicated Primary Examiners, who have fully proven their competence by passing a signatory authority program developed by the PTO. Such scrutiny of Primary Examiners, individuals certified by the PTO as an authority on patentability within a particular art, will ultimately undermine the public's confidence in the integrity of the PTO as a whole.

Irrespective of the foregoing, the Examiner and Office will kindly note that amendments were made to the claims as allowed on April 5, 2004, and new Claims 12 and 13 added. Applicant respectfully submits, however, that the foregoing amendments and new claims were made solely to advance prosecution of the above-referenced application. Applicants more specifically urge that the claims as amended on April 1, 2004 are patentable in light of the art of record, including the newly cited US 494.

**The Claimed Invention Is Patentable in Light of the Art of Record**

As noted above, Claims 1 through 4 stand rejected as anticipated by US 494.

It may be useful to consider the invention as recited in the claims before addressing the merits of the rejection. The claims are directed to methods of adding sorbic acid to agricultural livestock feedstuffs as a growth-stabilizing additive. Sorbic acid is generally known as a preservative, as evidenced by the cited art. Very recently, sorbic acid in high concentrations has been found to have nutritional activity for rearing

Application No.: 10/057,212  
Filing Date: January 24, 2002  
Page No.: 7

piglets, as discussed in the Application-as-filed on Page 2, lines 11 through 25. Conventional wisdom to date has indicated that higher amounts of sorbic acid induced higher weight gains.

Surprisingly, Applicants determined that agricultural livestock growth rate and feed conversion can be improved over conventional feedstuffs by including more moderate amounts of sorbic acid. For example, the addition of 1.0 wt % sorbic acid can provide a growth rate of up to 128 %. This is in sharp contrast to the conventional inclusion of much higher amounts of sorbic acid, such as 2.4 % sorbic acid, which yields only a 123 % growth rate.

Accordingly, the claims recite methods of adding sorbic acid to agricultural feedstuffs in an amount ranging from 0.5 to 1.0 wt %, to increase the growth rate of the resulting agricultural livestock. In advantageous embodiments, the recited moderate amounts of sorbic acid nevertheless yield the growth rates as high as 128% within agricultural livestock, as recited in new Claim 12. The claimed amounts of sorbic acid may be incorporated into advantageous exemplary livestock feedstuffs that include green fodder, silages, dried green fodder, roots, tubers, fleshy fruits, grains, seeds, brewer's grains, pomace, brewer's yeast, distillation residues, milling byproducts, and byproducts of the production of sugar or starch, as recited in Claim 13.

US 494 does not teach or suggest the claimed invention.

US 494 is directed to chewy dog snacks that can be stored in non-refrigerated conditions and are easy to prepare. (Col. 2, lines 48 – 53). The dog snacks are in the form of a moldable dough that includes gelatin, a cereal starch-containing agent, and a taste agent. (Col. 9, lines 2 – 3; Col. 2, lines 54 – 61). Gelatin is required within the dog snacks to provide a suitable consistency for the composition. (Col. 5, lines 16 – 21). Suitable taste agents are various meaty materials, such as beef, liver or poultry

Application No.: 10/057,212  
Filing Date: January 24, 2002  
Page No.: 8

meat meal. (Col. 7, lines 1 – 10). The chewy dog snacks may optionally include any of a laundry list of preservatives, in amounts of up to 4 weight percent. (Col. 8, lines 34 – 46). US 494 notes that the preferred preservative is propylene glycol. (Col. 8, lines 49 – 50). Considered as a whole, US 494 generally teaches away from the inclusion of such preservatives, however, as they are "not usually needed." (Col. 8, lines 43 – 44).

Accordingly, US 494 does not teach or suggest the recited method of using sorbic acid as a growth-stabilizing additive. Applicant respectfully submits that method patents have had a long and respected history as a distinct body of patent protection that is altogether separate from compositional protection. The boundaries of patentability are clearly set forth in 35 USC § 101, which permits patents to be issued for "any new and useful process, ... , or any new and useful improvement thereof." The term "process," as defined within 35 USC § 100, encompasses any process, art or method, including new uses of known compositions of matter. MPEP 706.03 (a). Applicant thus respectfully submits that the dog snack compositions of US 494 can not teach or suggest the recited growth-stabilizing methods of the claimed invention, particularly in light of the fact that the recited methods reflect a new use of altogether novel and unobvious compositions.

Applicant further respectfully submits that the compositions of US 494 most certainly do not teach or suggest the recited growth-stabilizing methods resulting in up to a 128 % increase in growth rate, as recited in Claim 12.

However, regardless of the Office's current view of method patents, US 494 further does not teach or suggest the claimed methods incorporating agricultural livestock feedstuffs. In fact, US 494 teaches away from the recited agricultural livestock feedstuffs by requiring the inclusion of gelatin and other meaty materials. Thus US 494 most certainly does not teach or suggest methods employing agricultural livestock feedstuffs selected from various plant-based feeds, such as silage and the like, as recited in Claim 13.

Application No.: 10/057,212  
Filing Date: January 24, 2002  
Page No.: 9

Nor does US 494 teach or suggest the recited agricultural livestock feedstuffs containing sorbic acid. US 494, considered in its entirety, actually teaches away from the recited sorbic acid by noting that preservatives are preferably not included within its dog snack compositions. US 494 merely broadly notes that, although not highly recommended, its dog snacks may include any of a laundry list of preservatives in amounts of up to 4 %. US 494 does not explain why or under what circumstances one should choose any particular preservative over the other, with the exception that it does disclose the preferable use of propylene glycol, which is obviously different from the claimed sorbic acid.

And US 494 most certainly does not teach or suggest agricultural livestock feedstuffs in which sorbic acid is added to the feedstuff as a growth-stabilizing additive in a concentration of from 0.5 to 1.0 % by weight. Nor would there have been any motivation to have selected the claimed range from US 494, as US 494 does not recognize sorbic acid as a result effective variable in regards to growth rate, much less the growth rate of agricultural livestock. Accordingly, US 494 can not teach or suggest the recited sorbic acid range that promotes the growth rate of agricultural livestock.

In fact, there would have been no motivation to have even looked to US 494. Dog snacks are an altogether different field of endeavour than agricultural livestock feed, to say the least. The particular problems addressed by US 494 and the claimed invention are also altogether different. US 494 provides dog snack compositions having improved shelf life. The claimed invention increases the growth rate of agricultural livestock.

As US 494 does not address the primary issue solved by the above-referenced application, i.e. improving the growth rate of agricultural livestock, it can not suggest a solution to that problem. Only the instant invention recognizes sorbic acid in a particular range as a result effective variable in regards to agricultural livestock growth

Application No.: 10/057,212  
Filing Date: January 24, 2002  
Page No.: 10

rate. The present invention thus resides in the selection of particular elements, i.e. sorbic acid in a particular range of amounts, from a wide number of possibilities to address a specific problem, i.e. improved growth rate.

Consequently, even if combined, (which Applicant submits should not be done) the claimed invention would not result. More particularly, the recited methods incorporating sorbic acid into feedstuffs as a growth-stabilizing additive in a concentration of from 0.5 to 1.0 % by weight would not result.

Furthermore, US 494 clearly requires gelatin and other meaty materials within its dog snacks. Consequently, the combination most certainly would not have further resulted in the recited method of using sorbic acid as a growth-stabilizing addition to agricultural livestock feedstuffs.

Applicants thus respectfully submit that the claimed invention is patentable in light of US 494.

Statement in Conformance with 37 CFR 3.73(b)

As noted above, a Power of Attorney, appointing Cathy R. Moore as a Practitioner of Record for Nutrinova Nutrition Specialties & Food Ingredients GmbH, is attached. The above-referenced application has been assigned in its entirety to Nutrinova Nutrition Specialties & Food Ingredients GmbH at Reel/Frame 012859/0149. Copies of the assignment will be forwarded upon request. Accordingly, Cathy R. Moore is authorized to act on behalf of Nutrinova Nutrition Specialties & Food Ingredients GmbH in the above-referenced application.

Application No.: 10/057,212  
Filing Date: January 24, 2002  
Page No.: 11

### **CONCLUSION**

It is respectfully submitted that Applicant has made a significant and important contribution to the art, which is neither disclosed nor suggested in the art. It is believed that all of pending Claims 1, 4 through 8 and new Claims 12 and 13 are now in condition for immediate allowance. It is requested that the Examiner telephone the undersigned if any questions remain to expedite examination of this application.

It is not believed that fees are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional fees are necessary to allow consideration of this paper, the fees are hereby authorized to be charged to Deposit Account No. 50-2193.

Respectfully submitted,

*Cathy Moore*

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### **CERTIFICATE OF FACSIMILE TRANSMISSION**

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office at facsimile number (703) 872-9306.

*Claire Wygand*  
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